

United States District Court
Central District of California

JOY JOHNSON et al.,

Plaintiffs,

v.

NAVIENT CORPORATION et al.,

Defendants.

Case № 2:24-cv-03164-ODW (SKx)

**ORDER DENYING PLAINTIFFS’
MOTION TO REMAND AND
GRANTING DEFENDANTS’
MOTION TO DISMISS [12] [21]**

I. INTRODUCTION

Plaintiffs Joy Johnson and Micah Brown bring this action against Defendants Navient Corporation and Navient Solutions, LLC (collectively “Navient”) for allegedly breaching a student loan contract. (First Am. Compl. (“FAC”), ECF No. 19.) Plaintiffs moved to remand and then filed their FAC. (Mot. Remand, ECF No. 12; FAC.) Defendants now move to dismiss Plaintiffs’ first, second, fifth, sixth, and seventh causes of action for failure to state a claim under Federal Rule of Civil Procedure (“Rule”) 12(b)(6). (Mot. Dismiss, ECF No. 21.) For the reasons discussed below, the Court **DENIES** Plaintiffs’ Motion to Remand and **GRANTS** Defendants’ Motion to Dismiss **WITH LEAVE TO AMEND**.¹

¹ Having carefully considered the papers filed in connection with the Motions, the Court deemed the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

II. BACKGROUND

The following facts are taken from Plaintiffs' FAC unless otherwise noted. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (stating that well-pleaded factual allegations are accepted as true for purposes of a motion to dismiss).

A. Factual Background

Johnson obtained three private student loans to attend law school. (FAC ¶¶ 23–24.) Johnson's uncle, Brown, cosigned these three loans. (*Id.* ¶ 23.) Both Johnson and Brown are citizens of California. (Notice Removal ("NOR") ¶ 8, ECF No. 1.)

After completing law school, Johnson made payments on the three loans. (FAC ¶ 26.) Navient Solutions, LLC—a wholly-owned subsidiary of Navient Corporation—serviced the loans. (*Id.* ¶ 24.) Both Navient Solutions and Navient Corporation are citizens of Delaware and Virginia. (NOR ¶¶ 9–10.)

Plaintiffs allege that Johnson and a "Navient representative" revised the terms of the student loan contract² through a phone call in 2016. (FAC ¶ 27.) During the call, the two parties modified "the amount of the [monthly] payment, the interest rate[,] and the term of the contract." (*Id.*) The two parties allegedly agreed that the monthly loan payment would be "an amount just under \$500.00." (*Id.*) Additionally, "the payment was fixed and to be applied to three loans[:] [loan no.] 4759 with a 3.0% interest rate, [loan no.] 4092 with a 3.5% interest rate, [and loan no.] 4100 with a 3.0% interest rate for the life of the loans." (*Id.*) The "Navient representative" allegedly "assured" Johnson that this new rate "would not adjust." (*Id.*) The representative also informed Johnson that, after Johnson made consecutive loan payments, Brown would be released as cosigner. (*Id.* ¶ 29.) Johnson and Brown allege this new agreement was recorded, but they "never received a written copy of the agreement, despite requests." (*Id.* ¶ 27.)

² Plaintiffs use both "contract" and "contracts" to describe the student loans. (FAC ¶ 27.) In their pleadings, neither party has specified which contract or contracts are the primary grounds for the present legal action. For clarity and judicial economy, the Court will treat the three student loans as one contract until otherwise noticed by the parties.

1 Johnson subsequently made payments and applied to have Brown released as
2 cosigner from the loans, but Navient denied the request. (*See id.* ¶¶ 28, 30.) In
3 March 2023, Johnson realized her interest rate had increased, and her autopayment
4 deduction had increased from \$500 to over \$800, an amount to which she contends
5 she never agreed to pay. (*Id.* ¶ 31.) Johnson and Brown disputed these changes and
6 requested that Navient send them an accounting and the original loan agreement and
7 documents. (*Id.* ¶ 32.) Navient advised Johnson and Brown to wait seven to ten
8 business days for the request to be fulfilled. (*Id.* ¶ 33.) The request was never
9 fulfilled. (*Id.*)

10 **B. Procedural Background**

11 On March 13, 2024, Plaintiffs initiated this action in California Superior Court.
12 (Mot. Remand 2.) Plaintiffs allege contract, negligence, and consumer protection
13 claims. (FAC ¶¶ 41–117.) They seek compensatory, special, general, punitive, and
14 exemplary damages, in addition to attorneys’ fees and costs. (FAC, Prayer ¶¶ 1–5.)
15 Plaintiffs also request that “Defendants be ordered to cancel the remaining balance on
16 Plaintiffs’ student loan account” and to return “all student loan payments unlawfully
17 collected with interest.” (*Id.* ¶¶ 3–4; NOR Ex. 1 (“Compl.”), Prayer ¶¶ 3–4, ECF
18 No. 1-1.)

19 On April 17, 2024, Defendants removed the case to this Court and, on May 17,
20 2024, Plaintiffs moved to remand. (NOR; Mot. Remand.) Before the Court ruled on
21 Plaintiffs’ Motion to Remand, on June 25, 2024, Plaintiffs filed their FAC and then
22 Defendants moved to dismiss. (FAC; Mot. Dismiss.) Both Motions are fully briefed.
23 (Opp’n Mot. Remand, ECF No. 14; Reply ISO Mot. Remand, ECF No. 16; Opp’n
24 Mot. Dismiss, ECF No. 22; Reply ISO Mot. Dismiss, ECF No. 23.)

25 **III. LEGAL STANDARDS**

26 Different legal standards govern the two pending motions. Plaintiffs’ Motion to
27 Remand is governed by 28 U.S.C. § 1441, while Defendants’ Motion to Dismiss is
28 governed by Rule 12(b)(6).

1 **A. 28 U.S.C. § 1441**

2 Federal courts are courts of limited jurisdiction, having subject-matter
3 jurisdiction only over matters authorized by the Constitution and Congress. U.S.
4 Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
5 375, 377 (1994). A suit filed in state court may be removed to federal court if the
6 federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a).
7 Courts strictly construe the removal statute against removal jurisdiction, and “[f]ederal
8 jurisdiction must be rejected if there is any doubt as to the right of removal in the first
9 instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party seeking
10 removal bears the burden of establishing federal jurisdiction. *Id.*

11 Federal courts have original jurisdiction when an action presents a federal
12 question under 28 U.S.C. § 1331, or diversity of citizenship under 28 U.S.C. § 1332.
13 A defendant may remove a case from a state court to a federal court pursuant to the
14 federal removal statute, 28 U.S.C. § 1441, on the basis of federal question or diversity
15 jurisdiction. To exercise diversity jurisdiction, a federal court must find complete
16 diversity of citizenship among the adverse parties, and the amount in controversy must
17 exceed \$75,000, usually exclusive of interest and costs. 28 U.S.C. § 1332(a).

18 **B. Rule 12(b)(6)**

19 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
20 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
21 theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). To
22 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading
23 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*
24 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to
25 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,
26 550 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual
27 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Iqbal*,
28 556 U.S. at 678 (internal quotation marks omitted).

1 The determination of whether a complaint satisfies the plausibility standard is a
2 “context-specific task that requires the reviewing court to draw on its judicial
3 experience and common sense.” *Id.* at 679. A court is generally limited to the
4 pleadings and must construe all “factual allegations set forth in the complaint . . . as
5 true and . . . in the light most favorable” to the plaintiff. *Lee v. City of Los Angeles*,
6 250 F.3d 668, 679 (9th Cir. 2001). However, a court need not blindly accept
7 conclusory allegations, unwarranted deductions of fact, and unreasonable inferences.
8 *Spewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

9 Where a district court grants a motion to dismiss, it should generally provide
10 leave to amend unless it is clear the complaint could not be saved by any amendment.
11 *See* Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d
12 1025, 1031 (9th Cir. 2008). Leave to amend may be denied when “the court
13 determines that the allegation of other facts consistent with the challenged pleading
14 could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture*
15 *Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Thus, leave to amend “is properly
16 denied . . . if amendment would be futile.” *Carrico v. City & County of San*
17 *Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011).

18 IV. DISCUSSION

19 Plaintiffs argue that removal is improper, and that they sufficiently plead their
20 causes of action. (Mot. Remand 9; Opp’n Mot. Dismiss 2.) Defendants contend that
21 removal is proper, and that Plaintiffs fail to sufficiently plead their first, second, fifth,
22 sixth, and seventh causes of action. (NOR ¶¶ 1–15; *see* Mot. Dismiss 1–2.) As
23 discussed below, the Court finds (1) Defendants’ removal is proper, and (2) Plaintiffs
24 fail to sufficiently plead their first, second, fifth, sixth, and seventh causes of action.

1 **A. Motion to Remand³**

2 As a preliminary matter, Defendants ask the Court to take judicial notice of
3 (1) promissory notes in connection to the student loans and (2) payment histories of
4 the student loans, in connection with establishing that removal is proper. (Defs.’ Req.
5 Judicial Notice ISO NOR (“DRJN”) 2–3, ECF No. 4.) The Court need not rely on
6 these documents to resolve the Motion to Remand, particularly because Plaintiffs do
7 not dispute citizenship or amount in controversy in their Motion to Remand. (*See*
8 Mot. Remand 4–9.) Thus, the Court denies Defendants’ request for judicial notice.

9 Here, Defendants argue removal is proper because the Court has subject matter
10 jurisdiction under 28 U.S.C. § 1332. (NOR ¶ 1.) Plaintiffs erroneously challenge
11 removal by claiming Defendants’ contractual activities established “minimum
12 contacts” in California—a test used in *personal* jurisdiction analysis, not *subject*
13 *matter* jurisdiction analysis. (Mot. Remand 8–9); *see Burger King Corp. v.*
14 *Rudzewicz*, 471 U.S. 462, 473–74, 480 (1985) (“[A] forum legitimately may exercise
15 personal jurisdiction over a nonresident who ‘purposefully directs’ his activities
16 toward forum residents.”). As previously discussed, § 1332 requires that the parties
17 be diverse in citizenship and the amount in controversy exceeds \$75,000. The Court
18 finds Defendants sufficiently plead these requirements.

19 *1. Diversity of Citizenship*

20 To satisfy the diversity requirement, Defendants must allege that the parties are
21 citizens of different states. 28 U.S.C. §§ 1332(a)(1), 1446(c). Defendants allege that
22 Plaintiffs are citizens of California. (NOR ¶ 8); *Kanter v. Warner-Lambert Co.*,
23 265 F.3d 853, 857 (9th Cir. 2001) (providing that a natural person’s state citizenship is
24 determined by her state of domicile). Additionally, Defendants allege that they are
25 citizens of Delaware and Virginia, because Navient Corporation is a Delaware
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27 ³ For purposes of Plaintiffs’ Motion to Remand, the Court considers Plaintiffs’ initial complaint
28 because diversity jurisdiction is determined at the time of removal. *See Soto v. Kroger Co.*,
No. 8:12-cv-0780-DOC (RNBx), 2013 WL 3071267, at *3 (C.D. Cal. June 17, 2013) (providing that
subject matter jurisdiction is determined at time of removal).

1 corporation with a principal place of business in Virginia, and Navient Solutions is an
2 LLC whose only owner/member is Navient Corporation. (NOR ¶¶ 9–10); 28 U.S.C.
3 § 1332(c) (providing that a corporation is a citizen of every state in which it is
4 incorporated and where it has its principal place of business); *Johnson v. Columbia*
5 *Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006) (“[A]n LLC is a citizen of
6 every state of which its owners/members are citizens.”). Thus, because Plaintiffs and
7 Defendants do not share state citizenship, Defendants satisfy the diversity requirement
8 of § 1332.

9 2. *Amount in Controversy*

10 To satisfy the amount in controversy requirement, Defendants must show that
11 the amount exceeds “the sum or value of \$75,000, exclusive of interest and costs.”
12 28 U.S.C. §§ 1332(a), 1446(c). “When the plaintiff’s complaint does not state the
13 amount in controversy, the defendant’s notice of removal may do so.” *Dart Cherokee*
14 *Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 84 (2014) (citing 28 U.S.C.
15 § 1446(c)(2)(A)). Additionally, a “defendant’s amount-in-controversy allegation
16 should be accepted when not contested by the plaintiff or questioned by the court.”
17 *Id.* at 87. Here, Plaintiffs do not state an amount in controversy in their Complaint,
18 nor dispute Defendants’ amount-in-controversy allegation.⁴ (Compl., Prayer ¶¶ 1–5;
19 NOR ¶¶ 12–15; *see generally* Mot. Remand.) Thus, because Plaintiffs remain silent,
20 the Court needs only to determine whether Defendants properly include a “plausible
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23 ⁴ In their Reply brief, Plaintiffs argue Defendants did not provide evidence supporting the amount in
24 controversy. (Reply ISO Mot. Remand 6.) However, “arguments raised for the first time in a reply
25 brief are waived.” *See Graves v. Arpaio*, 623 F.3d 1043, 1048 (9th Cir. 2010). Even if the Court
26 were to accept Plaintiffs’ challenge, Defendants have still established, beyond a preponderance of
27 the evidence, that the amount in controversy exceeds \$75,000. *See Dart Cherokee*, 574 U.S. at 89
28 (“Evidence establishing the amount [in controversy] is required by § 1446(c)(2)(B) only when the
plaintiff contests, or the court questions, the defendant’s allegation.”); *In re NVIDIA Corp. Sec.*
Litig., 768 F.3d 1046, 1051 (9th Cir. 2014) (noting that a court can consider documents incorporated
in a complaint by reference); DRJN Ex. B (“Loan Payment Histories”), ECF No. 4-2 (demonstrating
that the total amount of Plaintiffs’ student loans exceeds \$75,000).

1 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*
2 *Cherokee*, 574 U.S. at 89 (citing 28 U.S.C. § 1446(a)).

3 Here, Defendants make a plausible allegation as to the amount in controversy.
4 Defendants allege that Plaintiffs seek to cancel a total of \$85,794.37 collectively,
5 combining the three loans. (NOR ¶ 14.) Defendants include a breakdown showing
6 “[l]oan no. 4092 currently has an unpaid balance of \$34,634.28, loan no. 4100 has an
7 unpaid balance of \$36,853.59, and loan no. 4759 has an unpaid balance of
8 \$14,306.50.” (*Id.*) Defendants’ allegation is plausible because the amount in
9 controversy is calculated from the “promissory notes and payment histories for the
10 loans at issue.” (*Id.*; see also DRJN Exs. A–B, ECF Nos. 4-1 to 4-2.) As \$85,794.37
11 is plausible and exceeds \$75,000, Defendants sufficiently allege the requisite amount
12 in controversy.

13 Accordingly, because Defendants sufficiently plead both the diversity of
14 citizenship and the amount in controversy requirements of § 1332, the Court **DENIES**
15 Plaintiffs’ Motion to Remand.

16 **B. Motion to Dismiss⁵**

17 Plaintiffs assert seven causes of action: (1) breach of contract; (2) breach of
18 covenant of good faith and fair dealing; (3) promissory estoppel; (4) violation of
19 California Business and Professions Code section 17200; (5) negligent
20 misrepresentation; (6) violation of the California Consumer Credit Reporting Act; and
21 (7) violation of the California Student Borrower Bill of Rights Act. (FAC ¶¶ 41–117.)

22 Defendants move to dismiss Plaintiffs’ first, second, fifth,⁶ sixth, and seventh
23 causes of action, arguing that Plaintiffs fail to sufficiently plead each under
24 Rule 12(b)(6).

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27 ⁵ For purposes of Defendants’ Motion to Dismiss, the Court considers Plaintiffs’ operative FAC.

28 ⁶ Consistent with the parties’ reliance on California common law in their pleadings and briefing, the Court similarly applies California common law to the first, second, and fifth causes of action. (*See, e.g.*, FAC ¶ 42; Mot. Dismiss 3.)

1 1. *Breach of Contract*

2 In their first cause of action for breach of contract, Plaintiffs allege that
3 Defendants breached the terms of the orally modified student loan contract. (FAC
4 ¶¶ 44–52.) Defendants argue that Plaintiffs fail to allege the oral modification to the
5 student loan contract is valid and enforceable. (Mot. Dismiss 2–4.)

6 Under California law, a breach of contract claim has four elements: “(1) the
7 existence of [a] contract, (2) plaintiff’s performance or excuse for nonperformance,
8 (3) defendant’s breach, and (4) the resulting damages to the plaintiff.” *Piedmont Cap.*
9 *Mgmt., L.L.C. v. McElfish*, 94 Cal. App. 5th 961, 968 (2023) (alteration in original)
10 (quoting *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011)). The party
11 alleging the first element—existence of a contract—is required to show that the
12 contract is valid. *See Stover v. Experian Holdings, Inc.*, 978 F.3d 1082, 1086 (9th Cir.
13 2020) (“As the party alleging the existence of a contract . . . [plaintiff] has the burden
14 to prove each element of a valid contract.”); *San Diego City Firefighters, Loc. 145 v.*
15 *Bd. of Admin. of San Diego City Emps.’ Ret. Sys.*, 206 Cal. App. 4th 594, 606 (2012)
16 (“[T]he existence of a valid contract is necessary . . . [for plaintiffs] to prevail on their
17 claims of breach of contract.”).

18 “A contract in writing may be modified by an oral agreement to the extent that
19 the oral agreement is executed by the parties.” Cal. Civ. Code § 1698(b). The
20 meaning of “executed” may depend on factual circumstances; however, to the extent
21 the underlying contract is subject to the Statute of Frauds, so too is an oral agreement
22 to modify that contract. *See id.* § 1698(c). Under California’s Statute of Frauds
23 suretyship provision,⁷ a promise to answer for the debt of a third person must be in
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25 ⁷ *See generally* Restatement (Third) of Suretyship and Guar. § 11 (1996) (“The suretyship provision
26 of the Statute [of Frauds] is not limited to important or complex contracts, but applies to secondary
27 obligations created by promises made to an obligee of the underlying obligation.”). A surety or
28 guarantor is “one who promises to answer for the debt, default, or miscarriage of another.” Cal. Civ.
Code § 2787 (“The distinction between sureties and guarantors is hereby abolished.”). Further, “a
suretyship obligation must be in writing, and signed by the surety.” *Id.* § 2793. *But see id.* § 2794
(providing a series of exceptions to sections 2787 and 1624(a)(2)).

1 writing and signed by the parties. *Id.* § 1624(a)(2). If a contract that is subject to the
2 Statute of Frauds is not in writing or signed by the parties, then the contract is invalid
3 and unenforceable. *Id.*; see *Nielsen Constr. Co. v. Int’l Iron Prods.*, 18 Cal. App. 4th
4 863, 869 (1993).

5 California consumer credit contract law defines a cosigner as “a natural person,
6 other than the primary obligor or the spouse of the primary obligor, who renders
7 himself or herself liable for the obligation on a consumer credit contract without
8 compensation.” Cal. Civ. Code § 1799.101(a)(3). Logically, a student loan contract
9 with a cosigner who promises to answer for the debt of the student debtor falls within
10 the Statute of Frauds. Compare *id.* (defining a cosigner as one who renders
11 themselves liable for the primary obligor on a consumer credit contract), with *id.*
12 § 1624(a)(2) (stating that a promise to answer for the debt of a third person must be in
13 writing and signed by the parties).

14 Here, the student loan contract at issue in this action falls squarely within
15 California’s suretyship provision because Plaintiffs allege that Brown⁸ made a promise
16 to Defendants to pay Johnson’s debt on the original contract. (FAC ¶ 23); see Cal.
17 Civ. Code § 2787 (“A surety or guarantor is one who promises to answer for the debt,
18 default, or miscarriage of another, or hypothecates property as security therefor.”).
19 Thus, because the student loan contract falls within the suretyship provision, Plaintiffs
20 must allege the contract was in writing and signed by the parties for it to be valid.
21 Restatement (Third) of Suretyship and Guar. § 11 (1996) (“Pursuant to the Statute of
22 Frauds, a contract creating a secondary obligation is unenforceable as a contract to
23 answer for the duty of another unless there is a written memorandum satisfying the
24 Statute of Frauds or an exception applies.”).

25 Similarly, as Brown remained a cosigner on the modified agreement, it too must
26 be in writing and signed to be valid. (See FAC ¶ 45 (alleging Defendants promised to

27 ⁸ Plaintiffs also allege that Brown is a “cosigner,” a “[c]o-[b]orrower,” and an “older borrower.”
28 (FAC ¶¶ 29, 30.) Plaintiffs do not explain how these designations are relevant to their claims. (See generally FAC; Opp’n Mot. Dismiss.)

1 release Brown as cosigner only after Johnson satisfied conditions precedent)); Cal.
2 Civ. Code § 1698(c) (“The statute of frauds (Section 1624) is required to be satisfied
3 if the contract as modified is within its provisions.”). However, Plaintiffs do not
4 allege that the modified agreement was in writing or that they signed it. (See FAC
5 ¶¶ 27, 29.) Without a writing signed by the parties, the oral modification is invalid
6 and unenforceable. See Cal. Civ. Code § 1624(a)(2). Further, Plaintiffs offer no basis
7 to infer the Statute of Frauds does not apply, nor do they identify any applicable
8 exceptions to the suretyship provision that might save the oral modification from its
9 invalidation. (See FAC ¶¶ 41–52; Opp’n Mot. Dismiss 5.) The Court declines to
10 conjure legal theories that may make the oral modification plausibly enforceable for
11 pleading purposes.

12 By failing to allege that the parties signed in writing the modified student loan
13 contract, Plaintiffs did not sufficiently plead the existence of a valid contract as
14 required in a breach of contract cause of action. Accordingly, the Court **GRANTS**
15 Defendants’ Motion to Dismiss as to Plaintiffs’ first cause of action.

16 2. *Breach of Covenant of Good Faith and Fair Dealing*

17 In their second cause of action, Plaintiffs allege that Defendants breached the
18 covenant of good faith and fair dealing when they failed to adhere to the modified
19 student loan contract. (FAC ¶¶ 53–61.) Defendants move to dismiss this claim on the
20 grounds that Plaintiffs fail to allege an enforceable contract. (Mot. Dismiss 4–5.)

21 Under California law, an action for breach of covenant of good faith and fair
22 dealing requires “a contractual relationship between the parties, since the covenant is
23 an implied term in the contract.” *Molecular Analytical Sys. v. Ciphergen Biosystems,*
24 *Inc.*, 186 Cal. App. 4th 696, 711 (2010). Here, Plaintiffs do not clearly indicate
25 whether the theory for breach of covenant applies to the original contract, the new
26 contract, or both. (See FAC ¶ 57 (mentioning the original contract and the
27 modification but failing to specify that either provides the basis for the cause of
28 action).) The Court declines to speculate as to Plaintiffs’ intent on which contract

1 they rely for this legal theory. Accordingly, Plaintiffs fail to sufficiently plead their
2 cause of action for breach of covenant of good faith and fair dealing by not clearly
3 alleging a cognizable legal basis.

4 Thus, the Court **GRANTS** Defendants’ Motion to Dismiss as to Plaintiffs’
5 second cause of action.

6 3. *Negligent Misrepresentation*

7 In their fifth cause of action, Plaintiffs allege that Defendants are liable for
8 negligent misrepresentation because Defendants increased the interest rate on the
9 student loans despite previously promising not to do so. (FAC ¶¶ 95–105.)
10 Defendants argue the Court should dismiss this cause of action because Plaintiffs
11 allegations of Defendants’ “false promises of future action” do not qualify as a
12 negligent misrepresentation under California law. (Mot. Dismiss 5.)

13 Under California law, the five elements of negligent misrepresent are (1) “the
14 defendant made a false representation as to a past or existing material fact;” (2) “the
15 defendant made the representation without reasonable ground for believing it to be
16 true;” (3) “in making the representation, the defendant intended to deceive the
17 plaintiff;” (4) “the plaintiff justifiably relied on the representation;” and (5) “the
18 plaintiff suffered resulting damages.” *Majd v. Bank of Am., N.A.*, 243 Cal. App. 4th
19 1293, 1307 (2015). “Although a false promise to perform in the future can support an
20 intentional misrepresentation claim, it does not support a claim for negligent
21 misrepresentation.” *Stockton Mortg., Inc. v. Tope*, 233 Cal. App. 4th 437, 458 (2014).

22 As a matter of California law, Defendants’ alleged failure to keep a promise
23 regarding the student loan contract is not a false statement of fact for the purposes of
24 negligent misrepresentation. (FAC ¶¶ 99–100); *see Hooked Media Grp., Inc. v. Apple*
25 *Inc.*, 55 Cal. App. 5th 323, 331 (2020) (“[T]here is no recognized cause of action for a
26 negligent misrepresentation based on a false promise.”); *Tarmann v. State Farm Mut.*
27 *Auto. Ins. Co.*, 2 Cal. App. 4th 153, 159 (1991) (“[W]e decline to establish a new type
28 of actionable deceit: the negligent false promise.”). As Plaintiffs’ legal theory relies

1 on a false promise, which is not a basis for negligent misrepresentation, Plaintiffs fail
2 to sufficiently plead the first element required in this cause of action.

3 Thus, the Court **GRANTS** Defendants’ Motion to Dismiss as to Plaintiffs’ fifth
4 cause of action.

5 4. *Violation of the California Consumer Credit Report Act*

6 In their sixth cause of action, Plaintiffs allege that Defendants reported
7 incomplete or inaccurate information to a credit reporting agency, and therefore
8 violated the California Consumer Credit Report Act (“CCRA”). (FAC ¶¶ 106–12
9 (citing Cal. Civ. Code § 1785.25(a) (“CCRA”)).) Defendants argue that the Court
10 should dismiss this cause of action because Plaintiffs fail to plead any “factually
11 defective reporting, such as payment amounts not actually due.” (Mot. Dismiss 6.)

12 Under section 1785.25(a) of the CCRA, “[a] person shall not furnish
13 information on a specific transaction or experience to any consumer credit reporting
14 agency if the person knows or should know the information is incomplete or
15 inaccurate.” Here, Plaintiffs allege that Defendants furnished incomplete or
16 inaccurate information to a credit reporting agency because “Defendant[s] furnished
17 information it knew to be incomplete and/or inaccurate to a credit reporting agency.”
18 (FAC ¶ 108.) Plaintiffs’ factual allegations supporting this cause of action are merely
19 restatements of the statutory language under section 1785.25(a). (*See id.* ¶¶ 107–09.)
20 The Court will not accept the truth of allegations that merely restate statutory
21 language. *See Iqbal*, 556 U.S. at 678 (“[A] formulaic recitation of the elements of a
22 cause of action will not do.”) (quoting *Twombly*, 550 U.S. at 555)). Thus, because
23 Plaintiffs do not provide any factual allegations that directly support their claim,
24 Plaintiffs fail to sufficiently plead their cause of action under the CCRA.

25 Accordingly, the Court **GRANTS** Defendants’ Motion to Dismiss as to
26 Plaintiffs’ sixth cause of action.

1 5. *Violation of the California Student Borrower Bill of Rights Act*

2 In their seventh cause of action, Plaintiffs allege that Defendants violated eight
3 sections of the California Student Borrower Bill of Rights Act (“SBBOR”). (FAC
4 ¶¶ 113–17 (citing Cal. Civ. Code § 1788.101).) Defendants argue Plaintiffs present a
5 “kitchen sink” claim because Plaintiffs “recite numerous prohibitions” under the
6 SBBOR and conclude that Defendants made “unspecified violations.” (Mot.
7 Dismiss 7.)

8 Rule 8 requires a complaint to contain “a short and plain statement of the claim
9 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual
10 allegations are not required, but Rule 8 calls for “sufficient factual matter, accepted as
11 true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678
12 (quoting *Twombly*, 550 U.S. at 570).

13 Although “[n]o technical form is required” for Plaintiffs’ allegations, *see* Fed.
14 R. Civ. P. 8(d)(1), listing eight sections of the SBBOR in hopes that some will apply
15 does not satisfy the pleading requirements of Rule 8, (*see* FAC ¶¶ 114–17). Further,
16 Plaintiffs provide at best only one semi-factual allegation that directly supports this
17 cause of action: “As a result of Defendants’ *violations* Plaintiffs have suffered
18 damages in an amount to be determined at trial.” (*Id.* ¶ 117 (emphasis added).) This
19 is a conclusory allegation, which the Court does not accept as true. *See Iqbal*,
20 556 U.S. at 680–81 (holding that conclusory allegations are not assumed true).
21 Additionally, the Court declines to consider Plaintiffs’ new legal theories raised in
22 their Opposition, as these theories do not appear in the operative pleading. (*See* Opp’n
23 Mot. Dismiss 10–14); *Lee*, 250 F.3d at 679 (noting a court is generally limited to the
24 pleadings when considering a Rule 12(b)(6) motion to dismiss); *Provencio v. Vazquez*,
25 258 F.R.D. 626, 639 (E.D. Cal. 2009) (“Raising a completely new theory of
26 liability . . . in a brief in opposition to a motion to dismiss does not grant [d]efendant
27 fair notice of [p]laintiffs’ claim or the grounds upon which it rests.”). As Plaintiffs do
28 not state a clear, cognizable legal theory under the SBBOR, nor provide any factual

1 allegations as required by Rule 8, Plaintiffs fail to sufficiently plead a cause of action
2 under the SBBOR.

3 Thus, the Court **GRANTS** Defendants' Motion to Dismiss as to Plaintiffs'
4 seventh cause of action.

5 **V. CONCLUSION**

6 For the reasons discussed above, the Court **DENIES** Plaintiffs' Motion to
7 Remand, (ECF No. 12), and **GRANTS** Defendants' Motion to Dismiss, (ECF
8 No. 21). Accordingly, the Court **DISMISSES** Plaintiffs' first, second, fifth, sixth, and
9 seventh causes of action, **WITH LEAVE TO AMEND** to add factual allegations
10 consistent with the challenged pleading to cure the above noted deficiencies. If
11 Plaintiffs choose to amend, they must file their Second Amended Complaint no later
12 than fourteen days from the date of this Order, in which case Defendants shall answer
13 or otherwise respond within fourteen days of the filing. If Plaintiffs do not timely
14 amend, this dismissal shall be deemed a dismissal with prejudice as to the first,
15 second, fifth, sixth, and seventh causes of action, as of the lapse of the deadline to
16 amend.

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18 **IT IS SO ORDERED.**

19
20 October 15, 2024

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23 **OTIS D. WRIGHT, II**
24 **UNITED STATES DISTRICT JUDGE**
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